No. 142.
Brf. of Foster for Petitioners
Filed Nov. 19, 1900.

Office Supreme Court U.S.
FILED
NOV 19 1900
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

LIZZIE S. BLEECKER and ELSIE L. BLEECKER,
Libellants, Appellants,

AGAINST

The Steamship "KENSINGTON," her boilers, engines, &c.; THE INTERNATIONAL NAVIGATION COMPANY, Claimants; both claiming to be Cross-Appellants.

No. 142.

BRIEF FOR LIBELLANTS, APPELLANTS.

Statement of Facts.

This case was brought up by a writ of *certiorari* issued from this Court to the Circuit Court of Appeals for the Second Circuit, in order to review an affirmance by that Court of a decree in admiralty of the District Court for the Southern District of New York. The libellants had appealed to the Circuit Court of Appeals from so much of a decree of that District Court as limited the damages awarded them to the sum of ninety-six dollars and twenty cents. The claimants also filed a paper which is claimed to be a cross-appeal; but, inasmuch as their alleged appeal was not allowed by any Judge or any Court, such proceedings on the claimant's part was absolutely void (p. 71).

The decree was founded upon a libel against the steamship " Kensington " for a conversion and damage to the baggage of the libellants, of the value of two thousand dollars, upon a voyage from Antwerp to New York in December, 1897.

The libellants are the wife and daughter of an officer of the U. S. Navy, who were returning to their native country after a journey to Europe to join their husband and father, who was stationed there on his ship (Mrs. Bleecker, pp. 10–11, fols. 40–43). They engaged their passage from the claimant, a New Jersey corporation (Answer, p. 5, fol. 18), in Paris, France, early in December (Mrs. Bleecker, p. 11, fol. 43 ; Opinion, p. 58, fol. 231). They then paid part of their passage money, and received for this either a receipt or a ticket, which was not good until the balance of the purchase money was paid in Antwerp. In Antwerp they paid the balance of the purchase money. The best recollection of Mrs. Bleecker is that she got a receipt in Paris, which she gave up when she took the ticket at Antwerp (p. 20, fol. 77). Neither of them read the receipt for their passage money nor their ticket, and the day that they went on board the steamer they gave the ticket to the paymaster (Mrs. Bleecker, p. 15, fols. 57–58 ; p. 21, fols. 83–84 ; Miss Bleecker, p. 26, fols. 101–102)

After they had their ticket they received in Antwerp a receipt for their baggage, which they also did not read *(Ibid.)*, and which acknowledges the receipt of their baggage, " weight, contents and VALUE UN-
" KNOWN, and shipped by the Red Star Line steamer,
" subject to the conditions contained in the Co.'s ticket
" and bill of lading. Red Star Line, Antwerp,
" Dec., '97. Caisse " (p. 56, fol. 222). (The large capitals are ours.)

They were not asked concerning the value of their baggage by any agent of the shipowners (p. 24, fol. 95).

The ticket (pp. 51–56, fols. 201–222), so far as material, is as follows :

" Paris, on the 2nd of Dec., 1897. This ticket " is good for second cabin passage of the persons " named in the margin, to wit, two adults * * * " by the British Steamship Kensington from " Antwerp, on the 11th of December, 1897, at " one o'clock P. M., unless prevented from un- " foreseen circumstances. With 20 cubic feet " of personal baggage for each adult passenger." * * * *In minute type*, much smaller than what preceded : " Notice to passengers. It is " a condition upon which this ticket is granted, " and is mutually agreed, for the consideration " aforesaid, that * * *

" *(c) The shipowner or agent are* not under " any circumstances liable for loss, death, injury " or delay to the passenger or his baggage, " arising from the act of God, the public " enemies, fire, robbers, thieves of whatever " kind, whether on board the steamer or not, " perils of seas, rivers or navigation, accident " to or of machinery, boilers or steam, col- " lisions, strikes, arrest or restraint of princes, " courts of law, rulers, or people, or from any " act, *neglect* or default *of the shipowner's servants*, " whether on board the steamer not, or on " board any other vessel belonging to the ship- " owner, either in matters aforesaid or other- " wise howsoever. *Neither the shipowner nor* " the *agent is*, under any circumstances, or for " any cause whatever or however arising, *liable* " *to an amount exceeding 250* francs for death, " injury or delay of or to any passenger carried " under this ticket. The shipowner will use all " reasonable means to send the steamer to sea " in a seaworthy state, and well-found, but does " not warrant her seaworthiness.

" *(d) The shipowner or agent* shall not, under " any circumstances, be liable for any loss or " delay of or injury to passengers' baggage

"carried under this ticket *beyond the sum* "*of 250 francs at which such baggage* "*is hereby valued*, unless a bill of lading "or receipt be given therefor, and freight "paid in advance on the excess value at the "rate of one per cent., or its equivalent, in "which case the ship owner shall only be re- "sponsible according to the terms of the ship- "owner's form of cargo bill of lading, in use "from the port of departure, &c. All ques- "tions arising hereunder are to be settled ac- "cording to Belgian Law" (the italics are ours).

This ticket was not signed by either of the libellants; nor did it contain any place for the signature of either of them.

Upon the arrival of the steamer in New York, it was discovered that the libellants' trunks, and the other baggage of the passengers, had been broken to pieces by the impact of other freight upon the same deck; and that the contents of the trunks were destroyed by water, dye and dirt (Miss Bleecker, pp. 27–30, fols. 106–112, 113–115, 119; Mr. Cole, pp. 31–35, fols. 122–140). An examination of the hold showed that the freight and baggage had not been properly secured, had been improperly stowed and had not been dunnaged (Mr. Cole, pp. 32–34, fols. 125, 127–130, 134).

The claimants, although they issued a commission to Antwerp in order to examine an alleged expert on Belgian law, did not examine either the stevedores who stowed the baggage or the officer of the ship under whose direction it was put on board. It appeared that that officer was in the hospital at Antwerp, able to receive and permitted visitors, and his deposition could easily have been taken if his testimony would have aided his employers (Roberts, p. 44, fols. 175, 176). The

only evidence offered by the claimants to rebut the presumption of their negligence was that of Roberts, captain of the vessel, who testified that they had head winds and a heavy sea. He further swore that the water which for a space of about six inches covered the deck containing the baggage "was principally caused by steam con-"densation. There was a steam pipe that had "been carried away by the impact from the stuff "when it got adrift; it carried away the steam "pipe, that was the cause of the water—one of the "heating exhaust pipes" (p. 42, fol. 168).

Judge Brown held that the ticket was a contract; that the baggage was damaged by the negligence of the men in charge of the ship; that the clauses of the ticket which purported to exempt the shipowner and agent from liability did not apply; but that the clause limiting the liability to two hundred and fifty (250) francs was applicable; and he consequently awarded only that sum to each of the libellants. He excluded under their exceptions proof of the whole amount of their damages, but admitted enough to show that they were more than the amount awarded (Mrs. Bleeker, pp. 15–17, fols. 59–66).

In obedience to the rule of this Court we reprint here our

Assignment of Errors.

I. The final decree is erroneous in that it does not decree payment to the above-named libellants and appellants of the sum of $4,000 with interest and costs.

II. The final decree is erroneous in that it decrees payment to the said libellants and appellants of the sum of only $96.20 with interest, and costs amounting to $51.50, making in all the sum of $151.59 instead of the sum of $4,000, with interest and costs.

III. The District Judge erroneously held that the ticket marked Claimant's Exhibit A was a contract.

IV. The District Judge erroneously held that the language in said ticket which purported to be a limitation of the liability of the International Navigation Company was binding upon the said Lizzie Stearns Bleecker and Elsie L. Bleecker.

V. The District Judge erroneously held that the language in said ticket which purported to be a limitation of the liability of claimant to 250 francs was a limitation which it was competent for the defendant company to make.

VI. The District Judge erred in holding that the language in said ticket, Claimant's Exhibit A (marked "D"), which purported to provide that the shipowner or agent should not be liable for injury to possengers' baggage beyond the sum of 250 francs unless extra freight was paid for the same, limited the liability of the steamship Kensington, her boilers, engines, &c., in a court of admiralty for injury to such baggage.

VII. The District Judge erred in holding that the language in said ticket, which purported to provide that the shipowner or agent should not be liable for injury to passengers' baggage beyond the sum of 250 francs unless an extra charge was paid for the same, limited the liability of the said steamship, her boilers, engines, &c., in case such liability was caused by the negligence or misconduct of the officers or crew of the said steamship who stored the said baggage in the said steamship.

VIII. The District Judge erroneously held that the act of Congress, approved on the 13th day of February, 1893, namely: Chapter 105 of the acts of the second session of the Fifty-second Congress, which is

published in 27 United States Stat. at Large at page 445, known as the Harter Act, did not apply to the transportation of the baggage of passengers which was not separately shipped as cargo and for which no freight in addition to the passage money was paid.

IX. In the testimony of the libellants' witness, Lizzie S. Bleecker, the counsel for the libellants asked the following question :

"What were the contents of those trunks, what was their value?" The counsel for the claimant objected to the Court passing upon the question of damages; and the Court sustained the said objection and excluded the said question, to which the libellant duly excepted. The Court erred in sustaining the objection.

X. In the course of the cross-examination of the libellants' witness, Lizzie S. Bleecker, the counsel for the claimant offered the passage ticket, Claimant's Exhibit A, in evidence, which was admitted by the Court. The counsel for the libellants objected to the admission of the ticket in evidence as irrelevant and immaterial and because the conditions therein contained are against the public policy. The Court overruled said objection and admitted said ticket in evidence, to which the libellants duly excepted. The Court erred in overruling said objection and in admitting said ticket in evidence.

XI. In the course of the cross-examination of the libellants' witness, Lizzie S. Bleecker, the counsel for the claimant offered in evidence the baggage receipt, Claimant's Exhibit B. The counsel for the libellants objected to the admission of the baggage receipt as irrelevant, immaterial and incompetent. The Court overruled said objection and admitted said baggage receipt in evidence, to which the libellants duly excepted. The Court erred in overruling said objection.

XII. At the conclusion of the testimony the claimant's counsel offered in evidence the deposition of Maurice de Cock. The counsel for the libellants duly moved to suppress said deposition and objected to the admission of the deposition on the grounds that the witness failed or refused to answer one of the questions put to him on his cross-examination. The Court denied the motion and admitted in evidence said deposition to each of which rulings the counsel for the libellants separately duly excepted. The Court erred in denying said motion and in admitting said deposition in evidence.

XIII. The counsel for the libellants separately and specifically objected to the admission in evidence of the answer to the sixth interrogatory in said deposition, upon the ground that the witness had failed or refused to answer the sixth cross-interrogatory fully, as directed in said cross-interrogatory. The Court overruled said objection and admitted said answer in evidence, to which the libellants duly excepted. The Court erred in overruling said objection and in admitting said answer in evidence.

I.

THE STIPULATIONS MARKED A AND D ARE ATTEMPTS TO RELIEVE THE SHIP OWNER FROM LIABILITY FOR THE NEGLIGENCE OF HIS SERVANTS AGAINST THE PUBLIC POLICY OF THIS COUNTRY AND SHOULD BE DISREGARDED BY OUR COURTS.

(a) The reasons why this Court has held that common carriers cannot exempt themselves from

liability for the negligence of their agents, are, that such contracts are unwarrantable restrictions on commerce; that they tend to encourage negligence by the carrier and thus to endanger the life and property of those on board; and that they are obtained by undue influence, which amounts to fraud, coercion and oppression. Mr. Justice BRADLEY said, speaking for the Court in Railroad Co. vs. Lockwood, 17 Wall., 357, 378-380, 384:

> "Is it true that the public interest is not "affected by induvidual contiacts of the "kind referred to? Is not the whole busi- "ness community affected by holding "such contiacts valid? If held valid, the "advantageous position of the companies "exercising the business of common carriers "is such that it places it in their power to "change the law of common carriers in "effect, by introducing new rules of obliga- "tion.
>
> "The carrier and his customer do not "stand on a footing of equality. * * * "He cannot afford to higgle or stand out "and seek redress in the Courts. His busi- "ness will not admit such a course. He "prefers rather to accept any bill of lading, "or sign any paper the carrier presents; "often, indeed, without knowing what the "one or the other contains. In most cases he "has no alternative but to do this or aban- "don his business. * * * The status and "relative position of the parties render any "such conditions void. Contracts of common "carriers, like those of persons occupying a "fiduciary character, giving them a position in "which they can take undue advantage of the "persons with whom they contract, must rest "upon their fairness and reasonableness. * * *

" The conclusions to which we have come are :
" First, that a common carrier cannot lawfully
" stipulate for exemption from responsibility
" when such exemption is not just and reasona-
" ble in the eye of the law ; secondly, that it is
" not just and reasonable in the eye of the law
" for a common carrier to stipulate for exemp-
" tion from responsibility for the negligence of
" himself or his servants ; thirdly, that these
" rules apply both to carriers of goods and car-
" riers of passengers for hire, *and with special*
" *force to the latter.* "

In Baltimore and Ohio S. W. Ry. Co. vs. Voigt, 176 U. S., 498, 505, 507, this Court said, speaking through Mr. Justice SHIRAS : " This case has been frequently " followed, and it may be regarded as establishing a " settled rule of policy " (Railroad Company vs. Stevens, 95 U.S., 655 ; Liverpool Steam Co. vs. Phenix Co., 129 U. S., 397).

" The principles declared in those cases are salutary, " and we have no disposition to depart from them."

" Upon these principles we think the law of to-day " may be fairly stated as follows : 1. That exemptions " claimed by carriers must be reasonable and just, " otherwise they will be regarded as extorted from the " customers by duress of circumstances, and therefore " not binding. 2. That all attempts of carriers, by " general notices or special contract, to escape from " liability for losses to shippers, or injuries to passen- " gers, resulting from want of care or faithfulness, can- " not be regarded as reasonable and just, but as con- " trary to a sound public policy, and therefore " invalid."

In Oscanyan vs. Winchester Repeating Arms Co., 103 U. S., 261, 277,

Mr. Justice FIELD said :

" Contracts permissible by other countries
" are not enforcible in our Courts if they

" contravene our laws, our morality or our
" policy. The contract in suit was made in this
" country, and its validity must be determined
" by our laws. *But had it been made in Turkey,*
" *and were it valid there, it would meet with the*
" *same reprobation when brought before our*
" *Courts for enforcement.*

" The general rule undoubtedly is that the
" validity of a contract is to be decided by the
" law of the place where it is made, unless it is
" to be performed in another country; but to
" this, as to all general rules, there are excep-
" tions, and among these Story mentions con-
" tracts made in a foreign country to promote
" or reward the commission of crime, to corrupt
" or evade the due administration of justice, to
" cheat public agents or to affect the public
" rights, and other contracts which in their
" nature are founded in moral turpitude, and
" are inconsistent with the good order and solid
" interest of society. 'All such contracts,' he
" adds, 'even although they might be held valid
" ' in a country where they are made, would be
" ' held void elsewhere, or at least ought to be,
" ' if the dictates of Christian morality, or even
" ' of natural justice, are allowed to have their
" ' due force and influence in the administra-
" ' tion of international jurisprudence' (Story,
" Confl. L., Sec. 258)."

In Botany Worsted Mills vs. Knott, 82 Fed. R., 471, 472; s. c., 27 C. C. A., 326, the Circuit Court of Appeals for the Second Circuit held that, even in the case of an English ship, " the provision that the contract
" should be governed by the law of the flag (English),
" did not relieve the owner of the steamship, such
" stipulation being against the public policy of this
" country, and, therefore, not enforceable by its
" Courts."

Affd. by this Court on October 22d, 1900.

To the same effect is the "Glenmavis," 69 Fed. R., 472, D. C., E. D. Pa.

The "Iowa," D. C., D. Mass., 50 Fed. R., 561.

In the case at bar the Belgic law was not the law of the flag. The flag was that of the United States.

In The Guildhall, 58 Fed. R., 796, 798, the injury occurred upon a voyage from Rotterdam to New York. The bill of lading provided "that the rights of the parties in relation to the carriage and delivery under the bill of lading should be governed by English law." Judge BROWN said:

> "By numerous decisions of the Supreme "Court of the United States stipulations like "these, inserted by a common carrier in a bill "of lading, are, first, void as against public "policy (Liverpool & G. W. Steam Co. vs. "Phenix Ins. Co., 129 U. S., 397, 441; 9 Sup. "Ct., 469); and, secondly, *they are not evidence "of any contract to that effect on the part of the "shipper or consignee, because unreasonable and "not having the necessary element of voluntary "assent* (Railroad Co. vs. Manufacturing Co., "16 Wall., 318; Railroad Co. vs. Lockwood, "17 Wall., 357, 359; Express Co. vs. Caldwell, "21 Wall., 264, 266; Railroad Co. vs. Stevens, "95 U. S., 655, 659; The Energia, 56 Fed., "124). Contract against the public policy of "this country cannot be enforced or upheld in "our Court wheresoever made (Lewisohn vs. "Steamship Co., 56 Fed., 602; Oscanyan vs. "Arms Co., 103 U. S., 261). Such also seems "to be the law of England (Hope vs. Hope, "8 De Gex, M. & G., 731, 743; Rousillon vs. "Rousillon, 14 Ch. Div., 351, 369). In the "latter case Mr. Justice FRY said:
>
> "'It appears to me, however, plain on gen- "'eral principles that this Court will not

" 'enforce a contract against the public policy
" 'of the country wherever it may be made. It
" 'seems to me almost absurd to suppose that
" 'the Courts of this country should enforce a
" 'contract which they consider to be against
" 'public policy simply because it happens to
" 'have been made somewhere else.'

" If this be the law of England, then, under
" the very terms of the clause last above cited
" from this bill of lading, the preceding stipula-
" tions, though valid abroad, should not be en-
" forced here, because contrary to our public
" policy. This principle is recognized and em-
" bodied in the first two sections of the Act of
" Congress, approved February 13, 1893 (27
" Stat., 445, c. 105).

" It is further necessary that any contract of
" exemption shall be proved, as a matter of
" evidence, according to the law of the forum
" *(Hutch. Carr., Sec. 45; Hoadley v. Transpor-*
" *tation Co., 115 Mass., 394.) But since by the*
" *Federal law of this country, as above stated, the*
" *insertion of such stipulations in the bill of lading,*
" *and the receipt of the goods under it, are not*
" *sufficient evidence of any assent to them by the*
" *shipper or consignee, the exemptions alleged fail*
" *to be established as a contract by any sufficient*
" *legal proof* (See The Brantford City, 29 Fed.,
" 373, 393, 394, and cases there cited; The
" Energia, *supra.*)"

In the Brantford City, 29 Fed., 373, 395, the same Judge said:

" A foreign law is never adopted by comity
" where it would be against the public policy
" of the country of the forum, and prejudicial to
" its citizens."

In Monroe vs. Iowa, 50 Fed. R., 561, 563, Judge NELSON said:

> "The libellant is entitled to recover in spite "of the clause providing that all questions "arising under the contract shall be decided "according to British law. This seems to be "an attempt, in an indirect way, to stipulate "that the shipowner shall be exempt from "responsibility for the negligence of his ser- "vants, since the British law is supposed to "uphold such exemptions. The form of the "stipulation is immaterial, and as its purpose "is plainly to impose, upon a contract made "here, a construction which our law rejects as "contrary to public policy, it must be held to "be as much a nullity as the other clauses, "which in express terms limit the liability of "the owner."

In C. B. & Q. R. R. Co. vs. Gardiner, 51 Neb., 70; S. C. 70 N. W. Rep., 508, *held* that a limitation of liability contained in the shipping contract, which was valid in the State where it was made, would not be enforced against the public policy of Nebraska, although the goods were lost in transit through the other State.

In Curtis vs. Del., L. & W. R. Co., 74 N. Y., 116, the plaintiff checked baggage in Pennsylvania for delivery in New York City. It was held that since the contract was to be performed by the delivery in New York, the New York laws governed, and that a stipulation exempting the defendant from liability would not be enforced.

The President, &c., of the Merchants' Bank vs. Spalding, 12 Barbour, 302, 308, per EDWARDS, J.:

> "As a general rule, the Courts of one State, "acting upon the principle of national comity, "will enforce contracts made in another State,

"by the laws of which they are valid, unless
"the rights or interests of the State where the
"contract is sought to be enforced, or of its
"citizens, will be injured."

Dicey on Conflict of Laws, Prof. John B. Moore's Notes, 581:

"Courts will not enforce contracts that
"violate domestic policy."

Andrews vs. Pond, 13 Pet., 65.
Blanchard vs. Russell, 13 Mass., 1.
Bliss vs. Brainard, 41 N. H., 256.
Woodward vs. Roane, 23 Ark., 523.
Castleman vs. Jeffries, 60 Ala., 380.
Davis vs. Bronson, 6 Iowa, 410.
Insurance Co. vs. Edmonson, 5 La. O. S., 295, 300.
Merchants' Bank vs. Spalding, 12 Barb., 302.

It makes no difference that the contract provided that it should be construed by the laws of Belgium; nor would it have made a difference if the negligence had occurred in Belgium.

The reason of the rule that these exemptions are not enforced by the Courts of this country is that they tend to injure commerce by making it less safe, and that they are a fraud upon the rights of American citizens. The authorities are unanimous to the effect that the Courts of no country will enforce a contract which is fraudulent, or which is injurious to its own citizens, or is obnoxious to the public policy of the forum, although such contract may be valid by the laws of the country where it is made. They also agree that, when the performance is invalid by the law of the forum, the contract cannot be executed, although valid where made.

The Trinacria, 42 Fed. R., 863; and
Baetjer vs. Compagnie Generale Transatlantique, 59 Fed. Rep., 789,

both decided by a District Judge, are not inconsistent with the present case.

Those were contracts which affected the importation of ordinary merchandise *from foreign countries into* the United States. The public policy of the United States is not impaired by restrictions upon imports. Our revenue system, which is founded upon a protective tariff, establishes that position beyond a peradventure. Consequently, it may be that our Courts can enforce limitations upon the liability of carriers of foreign goods shipped to this country to compete with domestic articles.

This, on the contrary, is the case of two American citizens against whom unconscionable contracts are sought to be established and enforced; which contracts tend to impair the security of their lives and of their necessary personal effects upon a voyage from Europe to their native country. To uphold the claimants' position would tend to discourage and impede our citizens who may be abroad and desire to come back. It must consequently be against our public policy and void wherever made, and whatever language has been used.

The Court will further observe that the injury here was caused, according to the testimony of the captain of the ship, partly upon the high seas, through the breaking of the water pipe, and also partly in New York, by the spilling of the dye packed upon a lower deck when carried thence to the wharf. This distinguishes the case from those where the injury was solely caused by bad stowage in a foreign port.

Judge BROWN so held (Opinion, p. 63, fol. 252).

II.

The same principles make the attempted limitation of liability for baggage, to the sum of less than fifty dollars, 250 francs, equally unreasonable and ineffectual.

(a) This limitation applies only to the ship owner and not to the ship *(infra*, Point IV., at pp. 25–28 of this Brief*)*.

(b) The rule upon the subject is thus stated by this Court, Mr. Justice HARLAN, in

Railroad Co. vs. Fraloff, 100 U. S., 24, 27:

> Such regulations by common carriers must be "*reasonable in their character and not inconsistent* "*with any statute or their duties to the public*, to "protect themselves against liability, as insurers, "for baggage exceeding a fixed amount in value, "except upon additional compensation;" and they must be "distinctly brought to the knowl- "edge of the passenger."

This language was quoted with approval

in The Majestic, 166 U. S., 375, 385.

This Court then said (at p. 386), concerning the limitation of a recovery to ten pounds sterling that it was "a limitation, which we must say, does not strike us as exactly reasonable in view of the twenty cubical feet of luggage for each, which the company had expressly contracted to carry."

In Eells vs St. Louis, K. & N. W. Ry. Co., 52 Fed. Rep., 903, the Court refused to enforce a bill of lading signed by the shipper, providing that: "The liability "of the Company for valuable live stock shall not ex- "ceed $100 for each animal."

In Kellerman vs. Kansas City R. R. Co., 34 S. W. Rep., 41, the Supreme Court of Missouri *held* a provision unreasonable which limited the liability for live stock to $50 in the case of a bull. So did the Texas Court of Appeals a limitation to $30 in the case of a bull.

St. Louis, etc., St. Railway vs. Robbins, 14 S. W. Rep., 1075.

So did the Supreme Court of Texas a limitation to $100 in the case of a mule.

Southern Tex. Ry. Co. vs. Maddox & Co., 75 Texas, 300

In Ala. Great Southern R. R. vs. Little, 71 Ala., 611, a limitation of $20 a barrel was *held* to be unreasonable.

In Moses vs. Hamburg-American Packet Co., 88 Fed. R., 329, Judge BROWN *held* that the limitation of $100 therein for personal injuries was unreasonable and should not be enforced.

See, also, N. Y. & N. H. R. R. Co. vs. Sayles, 87 Fed. R., 444.
Schwarzchild vs. National S. S. Co., 74 Fed. Rep.. 257, 259.
McFadden vs. Mo. Pac. Ry. Co., 92 Mo., 343.

In Hart vs. Pennsylvania R. R. Co., 112 U. S., 331, the paper construed was a bill of lading for freight not passenger's baggage, and *signed by the plaintiff* (p. 337), which made a reasonable agreed valuation—namely, $200 for each horse or mule. The Supreme Court enforced that as not unreasonable; and one on which the minds of the parties met (p. 338).

No case can be found where the stipulation limiting the liability for loss of the baggage of a passenger upon an ocean voyage to the sum of $50 or less has been enforced.

In Calderon vs. Atlas S. S. Co., 69 Fed., 574, 575 (s. c. 170 U. S., 272):

"The bill contained on its face the follow-
"ing provision: 'And, finally, in accepting this
"'bill of lading, the shipper, owner and con-
"'signee of the goods and the holder of the bill
"'of lading agree to be bound by all of its
"'stipulations, exceptions and conditions
"'as printed on the back thereof, whether
"'written or printed, as fully as if they were
"'all signed by such shipper, owner, consignee
"'or holder.'"

It was expressly held in Glovinsky vs. Cunard S. S. Co., 4 N. Y. Misc., 266, that such a limitation to the amount of $50 upon the liability for the baggage of a steerage passenger was unreasonable and void.

(c) Here there were two passengers, ladies, who were the wife and daughter of a naval officer, and necessarily obliged to dress in accordance with the customs of society in which naval officers mingle. They were each allowed by the company "20 cubic "feet of personal baggage," which the defendant is estopped from disputing to be a reasonable amount. The sum of $50 is hardly sufficient to pay for the dressing case of one of them, or for a single dress, a dressing gown or even for a cloak, leaving out of consideration the other necessaries for traveling, much less 20 cubic feet for each. It is manifestly too unreasonable to be enforced.

In Railroad Co. vs. Fraloff, 100 U. S., 24, quoted *supra*, at page 26 of this brief, this Court held that $10,000 was not an unreasonable value for the personal baggage of a passenger upon a railroad.

The usual limitation in railroad tickets for a night's journey is $100, as is said by Mr. Justice Brown in

Calderon vs. Atlas S. S. Co., 170 U. S., 272, 279.

It is clear that more baggage is needed for a twelve-days' voyage by a passenger on an ocean steamship.

The Tariff Act of July 24, 1897 (Paragraph 697), establishes the law that it is reasonably necessary for an ocean traveler to buy abroad and bring back with him articles worth $100, besides those which he took from home.

It provides (30 Stat. at L., p. 202, par. 697): "Wearing apparel, articles of personal adornment, toilet articles and similar personal effects" purchased abroad can be imported by a passenger free of duty, but "no more than $100 in value of articles purchased abroad by such resident of the United States shall be admitted free of duty upon their return."

Even when assented to, such a limitation is against public policy, within the rule in Railroad Co. vs. Lockwood, 17 Wall., 357 *(infra)*.

(d) The correct construction of the clause does not even relieve the shipowner from liability for negligence. It is as follows:

> "The shipowner or agent shall not, under "any circumstances, be liable for any loss or "delay of, or injury to, passengers' baggage "carried under this ticket beyond the sum of "250 francs, at which said baggage is hereby "valued, unless a bill of lading," etc. (p. 53, fol. 209).

In Rawson vs. Pennsylvania R. Co., 48 N. Y., 212, the ticket contained the following notice on its face:

> "This ticket entitles the holder to not over "80 lbs. baggage free, and not at rate exceeding "in value 100 dollars, unless notice is given, "and an extra amount paid, at double first-class "freight rates."

It was held that the notice of limitation was ineffectual.

General language does not exempt from liability for the negligence of a steamship company, or its agents. See the authorities cited under Point IV., pp. 23-25 of this brief.

It has been held that general language limiting the liability for loss or damage to goods shipped upon an agreed valuation, does not apply to a case where the goods were lost by the negligence of the carrier or his servants, unless such negligence was especially mentioned and excepted in the contract.

Savannah F. & W. Ry. Co. vs. Sloat, 93 Ga., 803.
Georgia R. R. & Banking Co. vs. Keener, 93 Ga., 808.
Orndorff & Co. vs. Adams Express Co., 3 Bush (Ky.), 194.

Jacobson vs. Adams Express Co., 1 Ohio, C. C. R., 381: where the receipt stated that "In no event shall the holder demand beyond the sum of Fifty Dollars, at which the article forwarded is hereby valued."

Weiller vs. Pa. R. R. Co., 134 Pa. St., 310: Where the bill of lading provided that the agreed valuation should "cover loss or damage from any cause whatever."

See
Black vs. Goodrich Trans. Company, 55 Wis., 319.
s. c., 42 Am. Rep., 713.

III.

IF THE CONTRACT BETWEEN THE LIBELLANTS AND THE CLAIMANTS WAS IN WRITING, IT WAS CONTAINED IN TWO PAPERS, THE RECEIPT FOR THE BAGGAGE AND THE

TICKET; AND, SINCE THE RECEIPT EXPRESSLY STATES "VALUE UNKNOWN," THAT NULLIFIES THE PROVISION IN THE TICKET WHICH ATTEMPTS TO PUT A VALUE UPON THE TRUNKS.

The ticket was dated at Paris, but apparently was delivered to Mrs. Bleecker at Antwerp (p. 18, fol. 72). The receipt was delivered at Antwerp (p. 14, fol. 55). It is in the following language: "Weight, contents and value unknown, and shipped by the Red Star Line Steamer, subject to the condition contained in the Co.'s ticket and bill of lading. White Star Line, Antwerp, Dec., '97 Caisse" (p. 56, fol. 222).

This paper was short. written in large, legible type, and easily understood. The words "value unknown," which it contains, are inconsistent with any stipulation in fine print contained in the ticket, which attempts to place any valuation on the baggage. That clause of the ticket provides that "The ship owner or agent shall not * * * be liable for any loss or delay or injury to passengers' baggage carried under this ticket beyond the sum of 250 francs, at which said baggage is hereby valued, *unless a* bill of lading *or receipt be given* therefor, and freight paid in advance on the excess value," &c. The subsequent or contemporaneous delivery of the receipt was a waiver of the requirement for advance payment of freight on an excessive valuation, and is a complete nullification of so much of the ticket as seeks to value the baggage at a specified amount. If that was unknown to the steamship company, it could not agree that the baggage should be valued at a specified sum.

Inasmuch as these papers were drawn by the steamship company, they must be construed in case of doubt in favor of the passenger, *contra proferentem*.

Noonan vs. Bradley, 9 Wall., 394.

See an analogous case:

Tuck vs. Singer Mfg. Co., 67 Iowa, 576.

Mr. James M. Kerr, the well-known legal author, in a recent article in 59 Albany Law Journal, 167, states as a result of the authorities: "The provisions in a "bill of lading limiting the carriers' liability do not "bind the shipper unless he accepted the bill of lading "and understood and assented to its provisions. It "is a question of fact for the jury to determine "whether the shipper had knowledge of and assented "to the limitation in any other case" (Alb. L. J., 167).

Citing Chicago & A. R. R. Co. vs. Davis, 159 Ill., 53.

Field vs. Chicago & R. I. R. R. Co., 71 Ill., 458.

Boscowitz vs. Adams Express Co., 93 Ill., 523.

IV.

EVEN IF THE TICKET AMOUNTED TO A CONTRACT, STILL IT DID NOT EXEMPT THE SHIP FROM LIABILITY FOR THE NEGLIGENT ACTION OF ITS OFFICERS; NOR DID IT LIMIT THE SHIP'S LIABILITY TO THE SUM OF 250 FRANCS, OR $50.

(a) All contracts of this character are to be strictly construed in favor of the passenger and against the carrier which drew the contract, contra proferentem.

Ray on Freight Carriers, Chapter II., pp. 55, 56:

"Although a carrier of freight and pas- "sengers *in the State of New York* may law- "fully stipulate for exemption from liability "for negligence of itself and servants

" when supported by a good consideration, " such as carrying the goods at the lowest " rate made for this class of freight " (citing Jennings v. Grand Trunk R. Co., 52 Hun, 227), " such stipulation is to be strictly con- " strued, and the exemption must be ex- " pressed in terms; and if general words of " release are used, such construction as will " exclude exemption from negligence must " obtain, if the release is not thereby ren- " dered inoperative " (citing Elliott v. New York Cent. & H. R. R. Co., 33 N. Y. S. R., 861; Kenney v. New York Cent. & H. R. R. Co., 125 N. Y., 422, affirming 54 Hun, 143). " A contract releasing a carrier " from all damages to goods from any cause " not the result of collision or cars being " thrown off the track, does not release from " liability for negligence not resulting in " collision or derailment " (citing Phœnix Clay Pot Works v. Pittsburg & L. E. R. Co., 139 Pa., 284). " A bill of lading relieving " a carrier of perishable goods, generally, from " all responsibility for delays, will not relieve it " from liability for the delays occasioned by the " negligence of its own agents and servants " where they are not expressly specified " (citing McKay vs. New York Cent. & H. R. R. Co., 50 Hun, 563). " A common carrier which enters " into a contract exempting it from liability for " the negligence of its servants is not thereby " exempt from liability for its own negligence " (citing Weinborg vs. National S. Co., 25 Jones & S., 586). " An exception in a bill of lading, " in regard to liability for injury to cargo from " any neglect or default of the master, mariners, " or others in the service of the owners, does " not include negligence of the owners them- " selves " (citing The Guildnall, 58 Fed. Rep.,

796). "A shipping contract will not so operate "unless the intent is so clearly expressed that "the shipper could not be misled. It can- "not be inferred from general words in the con- "tract, such as 'damages occasioned by delays "'from any cause, or from change of weather.'"

So, in Fairbank vs. Cincinnati, &c., Ry. Co., 81 Fed. R., page 289, it was *held* that "a clause in a bill of lad- "ing exempting the carrier from liability, resulting "from breaking of machinery" did not include an exemption from a liability caused by the breaking of an axle of a car, but only included such machinery as was connected with the boilers and steam supply.

In Coupland vs. Housatonic R. R. Co., 61 Conn., 531, is was *held* that a stipulation exempting from liability for "breaking" did not include breaking the leg of an animal.

In Rio Grande R. Co. vs. Cross, 5 Texas, Civil App. 454, *held* that a stipulation in the bill of lading given by a railroad and steamship line which limited the liability of the carrier for the property which was to be conveyed "upon said steamship" did not relieve it from liability upon the railroad.

See, also,

N. J. Steam Navigation Co. vs. Merchants' Bank, 6 How., 344.
Hopkins vs. Westcott, 6 Blachford, 64.
Menzell vs. Ry. Co., 1 Dillon, 531.

(b) The clauses referred to only attempted to exempt the "shipowner or agent" who sold the ticket; not the ship. The liability of the ship was consequently not thereby affected.

Such is the natural meaning of the language. To relieve the ship from liability in admiralty requires the insertion by judicial construction into the paper of language which it does not contain. In this case, where the rule is that the paper must be construed strictly against the carrier and the ship, the Court

should not extend the exemption beyond the literal language of the ticket.

In the Harter Act (27 St. at L. 445, Section 2) the language expressly applies to "any vessel * * * her owner, master, agent or manager." Similar language was required here in order to exempt the ship from liability.

It often happens that Courts of admiralty hold that a ship is liable for damages when there is no relief against the owner. This is so in cases of both contract and tort.

In contracts by bottomry bonds the ship is pledged, but the owner incurs no personal responsibility by the execution of the bond by his agent, the master.

The Virgin, 8 Peters, 538, 554.
Stainbank vs. Shepard, 13 C. B., 418.
Stainbank vs. Fenning, 11 C. B., 51.

So as regards liability for torts.

The Druid, 1 W. Robinson, 391, 398, 399, was a suit against the owners of the ship for an intentional collision with another vessel. Dr. Lushington said:

> "I have purposely adopted the expression
> "'suing this ship and her owners' with the
> "view of considering a point which was inci-
> "dentally raised in the argument, whether the
> "liability of the ship and owners is to be
> "measured by the same rules, or whether the
> "ship could be made liable although no per-
> "sonal responsibility should attach upon the
> "owners. Before I proceed further, I will now
> "endeavor very shortly to dispose of the point
> "to which I have just adverted. Now, in some
> "cases it is obvious that a ship may be liable
> "where the owners would not be personally
> "responsible, as, for instance, in cases of lien
> "upon a ship for seamen's wages or bottomry
> "bonds, when the lien has been acquired be-

"fore the existing owners made their pur-
"chase. * * * In all causes of action,
"which may arise from circumstances occurring
"during the ownership of the persons whose
"ship is proceeded against, I apprehend that no
"suit could ever be maintained against a ship
"where the owners were not themselves per-
"sonally liable, *or where their personal liability*
"*had not been given up*," as in bottomry or the Limited Liability Act.

Desty, in his work on Admiralty, quotes a passage in this opinion in such a manner as to imply the direct opposite of what the Judge intended.

See, also, The Bold Buccleugh, 3 W. Robinson, 220.

Suppose that the goods had been securely placed on board the vessel without the knowledge of the owners, and that they had been destroyed by the willful misconduct of the captain in scuttling the ship. The ship would have been liable for his tort, which the law would have treated as the tort of the ship; but the owners might not have been held responsible.

It will be remembered that *there is no proof that, in the law of Belgium, the ancient law of admiralty, making a distinction between the liability of the owner and that of the ship, is not recognized.*

See Liverpool and Great Western Steam Co. vs. Phœnix Insurance Company, 129 U. S.. 397, 445.

In the "Yankee Blade" (Vandewater vs. Mills, 19 How. U. S., 82, 90) Mr. Justice GRIER said:

"Now, it is a doctrine not to be found in any
"treatise on maritime law that every contract
"by the owner or master of a vessel for the
"future employment of it hypothecates the
"vessel for its performance" (citing, amongst

other cases, the City of London, 1 W. Robinson, 89).

In the schooner "Freeman," (Hickox vs. Buckingham, 18 How. U. S., 182) it was *held* that the ship might be liable in a case where the owner was not.

This doctrine is not peculiar to courts of admiralty.

The discharge in bankruptcy of the mortgagor does not discharge the mortgage on the land;

Roberts vs. Wood, 38 Wis., 60;
Brown vs. Hoover, 77 N. C., 40;
Oliphint vs. Eckerly, 36 Ark., 69;

nor a chattel mortgage.

Hamilton vs. Bredeman, 12 Rich. So. C. Law, 464.
Stewart vs. Anderson, 10 Ala., 504.
Roden vs. Jaco, 17 Ala., 344.
Chamberlain vs. Meeder, 16 N. H., 381.

Jones on Mortgages, § 677: "An admission "or recital of indebtedness in a mortgage will "not create a personal liability by implication, "unless it be expressed unequivocally. The "mere recital of the indebtedness is not sufficient to create such liability." Citing

Henry vs. Bell, 5 Vt., 392, 393.
Howell vs. Price, 1 Peere Williams, 291, 293.
Coleman vs. Van Rensselaer, 44 How. Pr., 368.
Smith vs. Rice, 12 Daly, N. Y., 307.

This point was not noticed in Judge BROWN'S opinion.

V.

THERE IS INSUFFICIENT PROOF THAT SUCH STIPULATIONS AS THE TICKETS CONTAINED ARE VALID BY THE LAW OF BELGIUM.

The refusal of the expert to answer the questions on cross-examination, and to quote the decisions to which he referred, renders his testimony of no value (p. 8, fols. 31, 32; p. 45, fols. 177, 178).

Ketland vs. Burnett, 1 Wash., 144; Fed. Cas., No. 7742.

VI.

NEITHER THE TICKET NOR THE RECEIPT WAS A CONTRACT.

(a) It is well-settled law in the United States that unless a ticket is signed by the passenger it is not a contract, but merely a token or voucher; and that exemptions in it, not brought directly to the attention of the passenger, do not bind him. The law is well stated in the leading text books on the subject.

Wheeler on the Modern Law of Carriers (p. 230):

> "No language on a passenger ticket is held to "amount to a contract without proof that the "passenger read it and agreed to it. These "tickets are vouchers that the passenger has "paid his fare and is entitled to the usual ac- "commodation on the carrier's vehicle. They "do not, *per se*, constitute contracts."

Citing

Nevins vs. Bay State Steamboat Co., 4 Bosw., N. Y., 225.
Verner vs. Sweitzer, 32 Penn. St., 208.
Commonwealth vs. Vt. & Mass. R. R., 108 Mass., 7.

Mr. Wheeler's treatise was quoted with approval by this court in the Majestic, 166 U. S., 375, 384.

In Henderson vs. Stevenson, 2 H. L. Sc., 470, Lord HATHERLY said: "A ticket is in reality nothing more "than a receipt for the money which has been paid."

In Mauritz vs. N. Y., L. E. & W. R. R. Co., 23 Fed. R., 765, 769, the Court said:

"The ticket is ordinarily regarded as a mere voucher "for the money paid for it—a token of evidence of the "purchaser's right to be carried, or to have his bag-"gage carried, a certain distance."

Rawson vs. Pennsylvania R. R. Co., 48 N. Y., 212.

In Wiegand *et al.* vs. Central R. Co. of N. J., 75 Fed. Rep., 370–372, affirmed by Circuit Court of Appeals of Third Circuit, 79 Fed. Rep., 991, the ticket said:

"Company's responsibility for baggage limited to "$1.00 per lb., unless special agreement is made."

BUTLER, J.:

"As respects the limitation of liability "stated in the ticket, I think it cannot well be "doubted, under the decisions, that it is in-"effectual, in the absence of evidence that the "plaintiff's attention was *especially* called to "it."

The only exceptions in this country to the doctrine that have been found are a Massachusetts case, where there was a space in the contract for the passenger's signature; and a case in 57 N. Y., decided by the Com-

mission of Appeals, whose decisions have little weight, and which is in conflict with the preponderance of authority.

In The Majestic, 60 Fed. R., 624, 626, the ticket was headed "Cabin Passenger's Contract Ticket" in large type. The ticket was bought by the libellant's agent, "a gentleman of large business experience, who had frequently used similar tickets," and the libel described it as a "contract." The Circuit Court of Appeals held as a fact that the transaction amounted to a contract upon the terms contained in the ticket and its endorsement; but their decree was reversed, and the decree of the District Judge affirmed in 166 U. S., 375, 386.

This Court said, speaking through Mr. Justice FULLER, at page 386: "We quite agree with Lord O'HAGAN in *Henderson vs. Stevenson*, L. R., 2 H. L. Sc., 470:

> "That 'when a company desires to impose
> "'special and most stringent terms upon its
> "'customers, in exoneration of its own liability,
> "'there is nothing unreasonable in requiring
> "'that those terms shall be distinctly declared
> "'and deliberately accepted.'"

This seems to hold that whether or not the ticket expresses the contract is a question of fact in each case. The libellants were ladies with no business experience, who had never traveled on the line before. There was no proof that they had ever used similar tickets. This ticket was not signed by either of them.

It is not described on its face or elsewhere as a contract ticket, as was the case in the Majestic.

The libel as amended did not describe the ticket as a contract.

The only safe and the only reasonable rule in such a case is that the exemptions and limitations in the ticket are not a part of the contract of transportation unless the ticket is signed by the passenger, or the carrier's agent

tells them that it contains such provisions, or it is proved that they have read the paper. Here these three alternatives were all disproved.

In McFadden vs. Missouri Pacific Ry. Co., 92 Mo., 343, 350, 351:

> **" Mr. Frost, who acted in behalf of plaintiff, " in making the shipment and signed the con- " tract, testified that: Nothing was said about " the bill of lading being a special contract; " that he never asked for reduced rates, but " that he shipped the stock and signed the bill " of lading, in this instance, just as he had done " in all others, when acting for other shippers, " and that, so far as he knew, the bill of lading " in this case was the ordinary one signed by " him in all other cases of stock shipment.**
>
> **" The written contract was not, we think, " under these circumstances, conclusive evi- " dence, but merely *prima facie* evidence, that " the given rate was a special and reduced rate. " As between the parties, it was, in this respect, " open to explanation, and impeachable for " error, mistake or false statement."**

(b) The same rule applies to the receipt.

U. S. vs. Pinover, per CHOATE, D. J., 3 Fed. R., 305, 308.

N. Y., N. H. & H. R. R. Co. vs. Sayles, 87 Fed., 444.

A receipt can always be explained.

(c) The size of the type in which the exemption is printed is always an element that may be taken into consideration; and when fine type, or type smaller than the body of the receipt or ticket, is used, it has been held that the stipulations thus printed are inoperative.

See

Brown vs. Eastern R. Co., 11 Cush., 97.
Blossom vs. Dodd, 43 N. Y., 264.

Madan vs. Sherard, 73 N. Y., 329.
McMillan vs. Michigan S. & N. I. R. Co., 16 Mich., 79.
Verner vs. Sweitzer, 32 Penn. St., 208.
Blumenthal vs. Brainerd, 38 Vt., 402.
Perry vs. Thompson, 98 Mass., 249.
Simons vs. Great Western R. R. Co., 2 C. B. N. S., 619.
Strohn vs. Detroit & M. R. Co., 21 Wisc., 562.
Belger vs. Dinsmore, 51 N. Y., 166.
The Wisconsin vs. Young, 3 G. Greene, Iowa, 268.
Adams Exp. Co. vs. Guthrie, 9 Bush., Ky., 78.

In Richardson, Spence & Co. vs. Rowntree, House of Lords, 1894, A. C., 217; upon a passage from Philadelphia to Liverpool, the passenger received a folded ticket with a clause in small print, limiting the liability to $100, *held*, not sufficient notice to constitute a binding contract which relieved the carrier.

It will be remembered that the original allegation in the pleading, describing the ticket as a contract, was copied by mistake from the pleading in the "Majestic," and was subsequently stricken out in an amendment granted by the Court (p. 73, fol. 301).

The original pleading as unamended was not put in evidence, and cannot consequently prejudice the libellants. Had it been, they would have explained the inadvertence through which it was made.

See Abbott's Trial Brief before a Jury, p. 69.

VII.

The Harter Act, 27 Stat. L., 445, invalidates all the stipulations upon which the claimant relies.

Section 2 of that act provides :

> " It shall not be lawful for any vessel trans-
> " porting merchandise or property from or be-
> " tween ports of the United States of America
> " and foreign ports, her owner, master, agent or
> " manager, to insert in any bill of lading or
> " shipping document any covenant or agreement
> " whereby the obligations of the owner or own-
> " ers of said vessel to exercise due diligence to
> " properly equip, man, provision and outfit said
> " vessel, and to make said vessel seaworthy and
> " capable of performing her intended voyage,
> " or whereby the obligations of the master,
> " officers, agents or servants to carefully handle
> " and stow her cargo, and to care for and prop-
> " erly deliver the same, shall in any wise be
> " *lessened, weakened* or avoided."

That act applies to a ship sailing between New York and Antwerp, whether it sails from New York to Antwerp, or from Antwerp to New York.

Knott vs. The Botany Worsted Mills, October 22, 1900; where the voyage was from Buenos Ayres to New York upon a British vessel, not an American ship, as here. There the Court said, speaking through Mr. Justice GRAY: " This express provision of the Act of " Congress overrides and nullifies the stipulations of " the bill of lading that the carrier shall be exempt " from liability for such negligence, and that the con- " tract shall be governed by the law of the ship's flag."

In Wuppermann vs. Carib Prince, 170 U. S., 655, it was applied to a voyage from Trinidad to New York.

The damage to the property in the present case was caused both by bad stowage and by failure to properly equip the vessel so as to prevent the breaking of a steam pipe (pp. 31–35, 42).

The decision in The Rosedale, 88 Fed. R., 324, 328, does not apply. There the ticket was an ordinary card for a short voyage of a few hours on the Sound. Here the ticket was a large paper containing numerous stipulations in fine print. Moreover, the libellants here also received a receipt for their baggage.

The receipt described the ticket as a " ticket and " bill of lading " (p. 56, fol. 222). This estops the claimants from now contending that the ticket is not a bill of lading.

If the receipt and ticket amount to a contract, they are bills of lading or shipping documents. If they do not constitute a contract, the stipulations recited in them are not binding upon the libellants.

Planters' Fertilizer Mfg. Co., 101 Fed. R., 1001, 1003 (C. C. A., 5th Circuit), per PARDEE, J. :

> " A bill of lading is of a two-fold character. " It is a receipt for goods and a contract to " carry."

In Foster vs. Colby, 28 L. J., Ex., 81, 85,

Lord BRAMWELL defined a bill of lading as the written evidence of a contract between shipper and shipowner.

Porter on Bills of Lading, § 1 :

> " A bill of lading is a written acknowledg- " ment by a carrier of the receipt of certain " goods, and an agreement for a consideration " to transport and to deliver the same at a " specified place to a person therein named " or to his order."

Ibid., § 5: "The bill must be signed by or "on behalf of the party undertaking the "carriage, but need not be, and generally is "not, signed by the party shipping."

Ibid., § 54, speaking of clauses in a bill of lading which affect the carrier's liability: "The most common clause is 'contents unknown.'"

The "May Flower," 3 Ware, 300, 302:

"It is of the essence of a bill of lading, "that it contains a receipt for the goods with a "promise to carry and deliver them, for this the "master promises, and it necessarily contains "nothing more."

Cope vs. Cordova, 1 Raule (Pa.), 202, 209:

"The substance of a bill of lading is a formal "acknowledgment of a receipt of goods, and an "engagement to deliver them to the assignee or "his assigns."

Benedict on Admiralty, § 286:

"The written acknowledgment of the recep- "tion on board of a particular vessel of a par- "ticular quantity or parcel of goods to be car- "ried to a particular place is a bill of lading. "There is a usual, but not a necessary, form of "a bill of lading, and any paper containing the "substantial elements of the usual bill of lading "is a bill of lading. Shipments are often made "without any bill of lading or written evidence "of the transaction or of the liabilities of parties, "and the law and the jurisdiction are the same as "if the whole were in writing. It is the fact "that the goods are shipped and not the written "acknowledgment of it—the obligation to carry "them safely, and not the written contract—

" that creates the liability and fixes the juris-
" diction of the court."

Supposing that the ship owner refused to make any written contract at all ; but insisted upon limiting his liability by an oral contract which contained provisions forbidden by the Harter Act. Would this Court not hold that they were within the equity on that statute and consequently within its prohibitions ? Most certainly.

In the case at bar the receipt was a written acknowledgment that the goods had been received from the shippers to be transported and by reference to the ticket which it described as a " bill or lading," it incorporated the terms set forth in the ticket within itself, except so far as the statements in the receipt were inconsistent; and it consequently expressed the terms on which the goods were received. The place of destination was also described.

If the receipt and ticket were not a bill of lading they certainly constituted a " shipping document."

The Encyclopedia of Law, Vol. V., p. 853, defines a document as " A written or printed paper. A paper containing information relating to any matter."

The receipt and ticket were in print and writing. Each of them contained information concerning the voyage.

The addition by Congress of the words " or shipping document " to " bill of lading " shows its intention to make the statute apply to every case of the transportation of goods upon an ocean voyage where a receipt of any sort is given.

There is nothing in the act nor in the proceedings in Congress upon its passage to show that it was intended to exempt travellers from its benefits. It might as well be claimed that their baggage is exempt from duties.

VIII.

THE DECREE SHOULD BE REVERSED AND THE DISTRICT JUDGE ORDERED TO TAKE THE LIBELLANTS' TESTIMONY AS TO THE VALUE OF THEIR BAGGAGE, AND THEN TO ENTER A DECREE FOR THE FULL VALUE OF THE SAME AND COSTS, INCLUDING THE COSTS IN THIS COURT AND IN THE CIRCUIT COURT OF APPEALS.

ROGER FOSTER,
Of Counsel for Libellants, Appellants.